

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

IN THE MATTER OF:

CLIMAX POST OFFICE
CLIMAX, GEORGIA 39834

DOCKET No. A2013-3

**UNITED STATES POSTAL SERVICE RESPONSE TO
PARTICIPANT STATEMENT**
(July 30, 2013)

On July 23, 2013, the Postal Regulatory Commission (Commission) received a document entitled "Participant Statement" from Morgan Wolaver.^{1,2} Mr. Wolaver requested "the Postal Regulatory Commission to review the Postal Service's Final Determination on the basis of the Administrative Record before the Postal Service in the making of the Final Determination."³ Attached to the Participant Statement is a Memorandum in Support of Request for Review, submitted by counsel on behalf of Morgan Wolaver.

For the reasons discussed below, the Commission need not consider Mr. Wolaver's request for review because the 120 day procedural schedule in Docket No. A2013-3 has concluded. Further, the Commission does not entertain reconsideration requests of final orders. To the extent the Participant Statement is construed as an appeal, this controversy is not ripe for adjudication as the discontinuance study has not yet concluded and no final determination has been issued. Thus, if Mr. Wolaver's submission is considered as an appeal, it should be dismissed as premature.

¹ Mr. Morgan Wolaver is the President of the Association of United States Postal Lessors and the former lessor of the Climax Post Office.

² Participant Statement from Morgan Wolaver (July 23, 2013) (hereinafter "Mr. Wolaver's submission").

³ While the document is entitled "Participant Statement," the Postal Service interprets the submission to be a motion as defined by Commission's Rules of Practice, Rule 21. 39 C.F.R. § 3001.21. To the extent the Commission does not recognize Mr. Wolaver's submission to be a motion, the Postal Service respectfully moves for leave to file the instant pleading and to have it treated as a dispositive motion.

Procedural History

In Order No, 1576, the Commission established Docket No. A2013-3 to consider allegations concerning the Post Office in Climax, Georgia. Order No.1576 established a procedural schedule which set April 9, 2013 as the Expiration of the Commission's 120-day decisional period. Order No. 1576 designated a Public Representative and directed the Postal Service to file the administrative record or a responsive pleading.

On December 21, 2012, the Postal Service filed a motion to dismiss proceedings in this docket on grounds that the appeal was premature because the Climax Post Office was under an emergency suspension and no Final Determination was issued.⁴ On January 3, 2013, the Public Representative filed comments, in which he suggested that the Commission dismiss the appeal.⁵ In his comments, the Public Representative noted that the Postal Service promptly initiated a discontinuance study and did not appear that the Postal Service was abusing its suspension procedures. Initial Comments of the Public Representative (January 3, 2013), at 2. On January 11, 2013, Morgan Wolaver filed a Participant Statement.⁶ On January 14, 2013, Petitioner Toole filed comments in opposition to the Postal Service's Motion to Dismiss.⁷

On April 8, 2013, the Commission issued Order No. 1693, which dismissed the appeal as premature since the Postal Service had not yet issued a Final Determination

⁴ Motion of United States Postal Service to Dismiss Proceedings (December 21, 2012).

⁵ Initial Comments of the Public Representative (January 3, 2013).

⁶ Participant Statement (January 11, 2013).

⁷ Comments of Karen Toole (hereinafter Petitioner comments) (January 14, 2013).

to close the Climax Post Office.⁸ The 120-day decisional period, as established in Order No. 1576, expired on April 9, 2013.

By letter to the Commission dated June 19, 2013, Petitioner Toole requested the Commission to reconsider its decision to dismiss the appeal. By letter dated July 10, 2013, the Commission stated that the decision to dismiss the appeal was based on the finding that operations at the Climax Post Office had been suspended and the final determination to close had not been made.⁹ On July 23, 2013, more than three months after the 120-day decisional period expired, Mr. Wolaver submitted a second Participant Statement, which requests the Commission to review the Postal Service actions in connection with the Climax Post Office.¹⁰

Factual Background

As background, Climax Post Office had been a candidate facility within the Post Office Structure Plan (POStPlan).¹¹ Letters regarding the possible realignment of window service hours and a survey were mailed to customers of the Climax Post Office on September 28, 2012.¹² The letter explained the POStPlan process and informed customers that the Postal Service would hold a community meeting on November 8, 2012 to answer questions and provide additional information about POStPlan. In early August, the Postal Service entered lease negotiations with the landlord to renegotiate

⁸ Order No. 1693, Order Granting Motion to Dismiss (April 8, 2013) at 6.

⁹ Letter from Shoshana M. Grove, Secretary, Postal Regulatory Commission to Karen Toole, Clerk, City of Climax (July 10, 2013)(Commission letter denying Ms. Toole's request for reconsideration)(hereinafter PRC Letter to Karen Toole (July 10, 2013)).

¹⁰ Morgan Wolaver, Participant Statement (July 23, 2013).

¹¹ See PRC Docket No. N2012-2, USPS-LR-N2012-2/1 - Summary Spreadsheet, May 25, 2012. Climax, Georgia Post Office also appears on the updated Summary Spreadsheet in the same docket. See USPS-LR-N2012-2/11 - Summary Spreadsheet - Updated , July 19, 2012.

¹² See PRC Docket No. A2013-3, Petition for Review Received from Karen Toole Regarding the Climax, GA Post Office 39834, Dear Customer POStPlan Letter dated September 28, 2012.

the lease. However, negotiations failed and the Climax Post Office suspended operations on October 31, 2012.¹³ As a result of the suspension, the Postal Service initiated a discontinuance feasibility study on November 1, 2012.¹⁴ In light of the fact that the community meeting had already been scheduled and publicized to the community, the Postal Service held the meeting as scheduled on November 8, 2012. At the meeting, Postal Service representatives discussed the status of the Climax Post Office and informed customers that operations had been suspended due to failed lease negotiations. On December 4, 2012, the Postal Service mailed customers another letter detailing the reason for the suspension and provided alternate locations where postal services could be obtained.¹⁵ The letter also informed customers that the Post Office would be studied for discontinuance while under suspension.

Accordingly, because the Post Office is now suspended, the Climax Post Office is no longer a candidate facility for the POSTPlan initiative, and it is now undergoing a discontinuance feasibility study. The study is still ongoing and the Postal Service will continue to proceed in accordance with Handbook PO-101 and 39 U.S.C § 404(d) policies and procedures. As such, another community meeting will be scheduled to answer questions and discuss the possible closing of the Climax Post Office. If the Postal Service decides to proceed with closing the office, there will be a formal posting of a Proposal and a Final Determination. Thus, no final decision has been made to close the Climax Post Office.

¹³ See Attachment 1, Item No. 2, Notice of Post Office Emergency Suspension. Customers were notified of the suspension via letter and flyer posted at the Climax Post Office. See attachments to the petition, specifically the October 19, 2012 Dear Customer letter and the flyer that was posted on October 25, 2012.

¹⁴ See Attachment 2, Item No. 1, Authority to Conduct Investigation.

¹⁵ See Attachment 3, Item No. 3, Letter to Customers dated December 4, 2012.

Argument

Pursuant to 39 U.S.C. § 404(d)(5), “[a] determination of the Postal Service to close or consolidate any post office may be appealed by any person served by such office to the Postal Regulatory Commission within 30 days after such determination is made available to such person.” Pursuant to 39 C.F.R. § 241.3 and Handbook PO-101, the posting of the Final Determination serves as an appealable event. In this case, there is nothing to invoke the Commission’s jurisdiction to review Postal Service actions in connection with the Climax Post Office. First, the 120-day decisional period arising from the initial filing under Docket No. A2013-3 has expired. Under section 404(d)(5), the Commission “shall make a determination based upon such review no later than 120 days after receiving any [petition to review a Post Office discontinuance].” Because Mr. Wolaver’s submission was received on July 23, 2013, three months after the expiration of the 120-day decisional period and after the Commission dismissed the appeal, the Commission lacks a jurisdictional basis to consider Mr. Wolaver’s submission. Moreover, even assuming Mr. Wolaver’s submission had been timely received, the Commission ultimately determined that the appeal was not ripe for adjudication as the discontinuance study has not yet concluded and no final determination has been issued.

Second, the Commission itself has acknowledged that there are no measures in place for Petitioners to seek reconsideration of final orders. PRC Letter to Karen Toole (July 10, 2013). In its July 10, 2013 Letter to Petitioner Toole, the Commission clearly stated that the “Commission’s rules of practice do not provide for the filing of petitions for reconsideration.” The same principle thus applies here.

Third, even if the pleading is construed as a new appeal, it was filed prior to both the conclusion of the discontinuance study and the Postal Service issuance of a written Final Determination. Thus, the Commission should dismiss Mr. Wolaver's submission as premature. As the Commission concluded in Order No. 1693 and stated in its July 10, 2013 letter to Petitioner Toole, under applicable statutory provisions, 39 U.S.C. § 404(d)(5), the Commission is authorized to review Post Office closings, but not emergency suspensions. Since section 404(d)(5) jurisdiction is limited to the review of written final determinations to close Postal Service operated Post Offices, not emergency suspensions, and the Postal Service has not yet concluded its discontinuance study or issued a final determination to close the Climax Post Office, Mr. Wolaver's submission is premature.¹⁶ As the Commission has previously held, the appropriate remedy for a premature appeal is dismissal. See PRC Order No. 713, *Ida, Arkansas*, Docket No. A2011-11 (April 8, 2011) (dismissing an appeal for lack of jurisdiction) and more recently, PRC Order No. 1581, *Tyner, Indiana*, Docket No. A2012-127 (December 17, 2012) (dismissing an appeal as premature).¹⁷ In sum, the Commission's jurisdiction may not be invoked because the Postal Service has not yet issued a final determination to discontinue the Climax Post Office.

Conclusion

By Order No. 1576, the Commission established a procedural schedule, which expired on April 9, 2013. On April 8, the Commission issued Order No. 1693, which

¹⁶ 39 C.F.R. § 3025.1(a) defines "final determination" as "the written determination and findings required by 39 U.S.C. 404(d)(3)."

¹⁷ Order No. 712, Order Dismissing Docket No. A2011-11 *Ida, Arkansas*, PRC Docket No. A2011-11 (April 8, 2011); Order No. 1581, Order Dismissing Docket No. A2012-127 *Tyner, IN*, PRC Docket No. A2012-127, (December 17, 2012).

dismissed the appeal in this docket as premature. Mr. Wolaver's submission was received three months after the expiration and the conclusion of the appeal. Additionally, the Commission's rules of practice contain no procedures for consideration of requests for review filed after the expiration of the 120-day decisional period or after a final order has been issued. Since Mr. Wolaver's submission has no basis in section 404(d) or the Commission's rules of practice, the Commission should not grant Mr. Wolaver's request for review.

Alternatively, the Postal Service has yet to issue a written Final Determination to discontinue the Climax Post Office and filing of a petition for review before such a Final Determination was issued is premature. Without a Final Determination for the Commission to review, the appeal cannot be adjudicated under section 404(d)(5). Therefore, the Postal Service respectfully opposes Mr. Wolaver's submission. To the extent the Commission treats the submission as an appeal, the Postal Service requests that this matter be dismissed.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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July 30, 2013

ATTACHMENT 1



NOTICE OF POST OFFICE EMERGENCY SUSPENSION

A. Suspended Office

Name: CLIMAX State: GA Zip Code: 39834
Area: SOUTHERN District: NORTH FLORIDA PFC
Congressional District: 2 County: DECATUR
EAS Grade: 16 Finance Number: 121804

Post Office: Classified Station Classified Branch CPO

Effective date of suspension: 10/31/2012 Date CPO Established: -

Justification (specific reason(s) for suspension):

Negotiations with the current landlord started in August to drop the lease to fair market value. The current lease was \$11.84/sqft. The average lease for offices surrounding this office is \$7.43/sqft. FSO countered several times with the last offer of \$8.50/sqft with a 60 day termination clause. The landlord made the last final offer of \$8.75/sqft 5 year term no termination clause and all other terms remain the same.

Alternate Service Provided (i.e. rural delivery to roadside mailboxes, CBUs, ect.):

RURAL SERVICE WILL CONTINUE TO BE PROVIDED BY THE WHIGHAM GA 39897 POST OFFICE. POST OFFICE BOX SERVICE WILL BE PROVIDED BY VPO CLIMAX GA AT 115 W BROAD ST. LOCATED DIRECTLY ACROSS STREET FROM PRESENT LOCATION OF THE POST OFFICE. NO CUSTOMER ADDRESSES WILL BE AFFECTED. FULL WINDOW SERVICES ARE AVAILABLE AT THE BAINBRIDGE POST OFFICE LOCATED 9.3 MILES AWAY OR THE WHIGHAM GA POST OFFICE LOCATED 6.5 MILES FROM PRESENT LOCATION. RURAL CARRIER WILL HAVE SUPPLIES AND STAMPS AVAILABLE FOR PURCHASE.

Effect on Employees (include Career/Noncareer Employees):

EMPLOYEES and RURAL ROUTES WILL BE RELOCATED TO ADMINSTRATIVE OFFICE 6.5 MILES.

Hours of Operation:

Retail Hours Saturday 845 to 1015 Monday - Friday 830 to 1200 - 1330 to 1630

(Include lunch break)

0 General Deliveries

162 Post Office Box

999 Total Customers

B. Administrative Office

Name: WHIGHAM State: GA Zip Code: 39897
EAS Grade: 18 Finance Number: 129383 Miles Away: 6.5
PO Boxes Available: 222

Hours of Operation

Retail Hours Saturday 800 to 1000 Monday - Friday 800 to 1230 - 1400 to 1630

(Include lunch break)

C. Nearest Office

Name: BAINBRIDGE State: GA Zip Code: 39817
EAS Grade: 21 Finance Number: 120572 Miles Away: 9.3
PO Boxes Available: 1040

Hours of Operation

Retail Hours Saturday 930 to 1130 Monday - Friday 830 to 1700

(Include lunch break)

D. Postmaster Organization Notification:

Notified: YES NO Date of Notification: 10/25/2012

E. Plan of Action (HQ must be notified with 90 days):

OFFICE WILL BE STUDIES FOR DISCONTINUANCE.

Prepared by: ALICE RYLE Date: 11/28/2012

Title: NORTH FLORIDA PFC Post Office Review Coordinator

Approved By:

Date 12/04/2012

CHARLES MILLER
DISTRICT MANAGER
NORTH FLORIDA PFC

cc: Area PO Review Coordinator
District PO Review Coordinator
Nation League of Postmasters
National Association of Postmasters of the United States

ATTACHMENT 2



11/01/2012

CHARLES MILLER
DISTRICT MANAGER
NORTH FLORIDA PFC

SUBJECT: Authority to Conduct Investigation

I request your authorization to investigate a possible change in postal services for the office in the 2 congressional district.

Post Office Name: CLIMAX
Zip+4 Code: 39834-9998
EAS Level: 16
Finance Number: 121804
County: DECATUR
Proposed Admin Office: WHIGHAM ADMIN Miles Away: 6.5
Near Office Name: BAINBRIDGE Near Miles Away: 9.3
Number of Customers:
Post Office Box: 162
Total Customers: 999
ZIP Code Change: Yes NO ZIP Code
Maintain Town Name: Yes NO

The above office became vacant when the postmaster retired on 07/31/2012.
(Please check below the rational for this study. You can check more than one box.)

- Emergency Suspension
- Office Workload
- Insufficient Customer Demand
- Reasonable Alternate Access
- Special Circumstances

STACY BRINSON
Manager, Post Office Operations

Approval to Study for Discontinuance:

DISTRICT MANAGER
NORTH FLORIDA PFC

11/01/2012

DATE

cc: Area Manager, Public Affairs and Communication

ATTACHMENT 3



Docket: 1358386 - 39834
Item Nbr: 3
Page Nbr: 1

12/04/2012

Dear Postal Customer:

The CLIMAX Postmaster retired on 07/31/2012. A noncareer clerk from the office has served as the officer-in-charge since that time. Negotiations with the current landlord started in August to drop the lease to fair market value. The current lease was \$11.84/sqft. The average lease for offices surrounding this office is \$7.43/sqft. FSO countered several times with the last offer of \$8.50/sqft with a 60 day termination clause. The landlord made the last final offer of \$8.75/sqft 5 year term no termination clause and all other terms remain the same.. Therefore, it will be necessary to suspend services at the CLIMAX at the close of business on 10/31/2012. This change is tentative and will not lead to a formal proposal unless we conclude that it will provide a maximum degree of regular and effective postal services.

While the office is suspended, OFFICE WILL BE STUDIED FOR DISCONTINUANCE.. Please contact the postmaster of the for advice regarding the potential placement of mailboxes. Customers presently receiving rural delivery will not experience a change in service, with the possible exceptions of picking up parcels and accountable mail at the that the carrier was unable to deliver. CLIMAX route customers will continue to use CLIMAX GA 39834 as their last line of delivery.

Rural delivery is particularly beneficial to senior citizens, people with disabilities, and working people because no one has to pick up the mail from the post office. You will have 24-hour access to your mail. In addition, the rural carrier can provide all the retail services provided at the CLIMAX. Enclosed is information about some of the services available from the carrier. Most transactions do not require meeting a carrier at the mailbox. Stamps By Mail order envelopes and Money Order Application forms are available for your convenience; or you may place a note in the mailbox, with payment, and the carrier will provide the requested services. When an accountable item requiring a signature, such as a certified letter, cannot be delivered on the first day, the carrier will return the item to the Post Office. You may pick up the article at the Post Office, request redelivery on another day convenient for you, or authorize the carrier to deliver the item to another person.

Customers who wish to obtain Post Office box service may do so at the adminoffice Post Office, located 6.5 miles away. The Post Office has 24-hour lobby access for customer convenience. Window service hours at are 800 to 1230 - 1400 to 1630 Monday through Friday and 800 to 1000 on Saturday. Post Office box lobby hours are adminlobbymf Monday through Friday and adminlobbysat on Saturday. Post Office boxes are available at this location (*check office for fees*). If applicable, Post Office Box refunds can be received at the CLIMAX PO.

Retail services are also available at the Post Office, located 9.3 miles away. Window service hours at Post Office are from nearmfretail, Monday through Friday, and nearsatretail on Saturday. Post Office box lobby hours are nearmflobby.

If you have any questions concerning the placement of rural mailboxes or the services available to you through the rural carrier, please contact the postmaster.

I realize with change there is always concern. No final decision to permanently discontinue the Post Office has been made. A community meeting will be held at or near the in the coming weeks to explain our plans and solicit your comments concerning possible alternate means of providing postal and other services. In the interim, we are confident that carrier delivery will continue to provide CLIMAX customers with effective and regular postal services.

Sincerely,

STACY BRINSON
Manager, Post Office Operations

Enclosure: Official Record

cc:

Postmaster/OIC CLIMAX PO

Postmaster /

Post Office Review Coordinator